

MICHAEL A. KAKUK
Assistant U.S. Attorney
U.S. Attorney's Office
901 Front Street, Suite 1100
Helena, MT 59626
Phone: (406) 457-5262
FAX: (406) 457-5130
Email: michael.kakuk@usdoj.gov

FILED

FEB 18 2021

Clerk, U.S. District Court
District Of Montana
Missoula

SHANNON L. CLARKE
Assistant U.S. Attorney
U.S. Attorney's Office
105 E. Pine St, 2nd Floor
Missoula, MT 59802
P.O. Box 8329
Missoula, MT 59807
Phone: (406) 542-8851
Email: shannon.clarke@usdoj.gov

**ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

**UNITED STATES OF AMERICA, *ex*
rel. BNSF RAILWAY COMPANY,**

Plaintiff/Relator,

vs.

**THE CENTER FOR ASBESTOS
RELATED DISEASE, INC.,**

Defendant.

CV 19-40-M-DLC

**FILED UNDER SEAL PER
31 U.S.C. § 3730(b)**

**THE UNITED STATES' NOTICE
OF ELECTION TO
DECLINE INTERVENTION**

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.* The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States has the right only to a hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994). Therefore, the United States requests that, should either the relator or the defendant propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served upon the United States; the United States also requests that orders issued by the Court be sent to government counsel. The United States reserves its right to order any deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal of the

relator's action or claim. The United States also requests that it be served with all notices of appeal.

Finally, the United States requests that the relator's Second Amended Complaint (Doc. 22), this Notice, and the attached proposed Order be unsealed.¹ The United States requests that all other papers on file in this action remain under seal because, in discussing the content and extent of the United States' investigation, such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

A proposed order accompanies this notice.

DATED this 18th day of February, 2021.

LEIF M. JOHNSON
Acting United States Attorney



MICHAEL A. KAKUK
SHANNON CLARKE
Assistant U.S. Attorneys
Attorneys for Plaintiff United States

¹ The United States does not oppose the unsealing of the Complaint (Doc. 1), the Amended Complaint (Doc. 5), and the filings associated with the Second Amended Complaint (Docs. 20, 21) at the Court's discretion.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2021, a copy of the foregoing document was served on the following person by the following means.

_____	CM/ECF
<u> 1 </u>	Hand Delivery
<u> 2 </u>	U.S. Mail
_____	Overnight Delivery Service
_____	Fax
_____	E-Mail

1. Clerk of Court

2. Chad M. Knight
James E. Roberts
W. Adam Duerk
KNIGHT NICASTRO, LLC
283 W. Front Street, Suite 203
Missoula, MT 59802
Phone: (406) 546-0881
Fax: (303) 845-9299
Email: knight@knightnicastro.com
roberts@knightnicastro.com
duerk@knightnicastro.com
Attorneys for Relator



SHANNON L. CLARKE

Assistant U.S. Attorney

Attorney for Plaintiff United States